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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,863	06/16/2006	Masamichi Kaneko	1034185-000068	8663
21839	7590	07/09/2010	EXAMINER	
BUCHANAN, INGERSOLL & ROONEY PC POST OFFICE BOX 1404 ALEXANDRIA, VA 22313-1404				DEMERE, CHRISTOPHER R
ART UNIT		PAPER NUMBER		
3782				
NOTIFICATION DATE			DELIVERY MODE	
07/09/2010			ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com  
offserv@bipc.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/542,863	KANEKO, MASAMICHI	
	<b>Examiner</b>	<b>Art Unit</b>	
	CHRISTOPHER DEMEREE	3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 June 2010.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 2-7 is/are pending in the application.  
 4a) Of the above claim(s) 1 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 2-7 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/17/2010 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laciacera et al. (US 6279779 B1; hereinafter Laciacera) in view of Hess, III et al. (US 6131806 A; hereinafter Hess) and Wald (US 5564622 A).

Regarding claims 2, 3 and 7, Laciacera teaches a dispensing structure incorporating a valve containing fitment for mounting to a container comprising a cap (17) on a packaging container and an area for pre-laminated hole sealed by film (9), a spout portion (15) of a cylindrical shape integrally molded with the flange (19) approximately at an angle so as to be upright substantially (see Fig. 4), and a cylindrically shaped movable ring (2) and cutter (18) for piercing the film (Col 5 lines 15-

25). Laciacera lacks a spout closure comprising a movable ring for piercing said film seal of the closure; said spout mounted on a tilted wall yet oriented parallel to a vertical sidewall.

Hess teaches a dispensing structure wherein the spout is mounted on a forward tilted upper wall (336).

Wald teaches a reusable device having a pour spout for cartons having gable tops wherein the spout comprises a frame body (11), a cap (Col 4 line 57) and a cylindrically-shaped movable ring (22) for cutting open said carton. Examiner notes that the Figure 1 embodiment depicts the spout on a tilted surface of a gable top carton wherein said spout is parallel to a vertical plane (Col 4 lines 42-59). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to mount Laciacera's spout on a tilted upper front wall, as disclosed by Hess, and further to modify the spout such that it is oriented parallel to a vertical sidewall, as disclosed by Wald, while mounted on said tilted wall in order to reduce spillage (Wald; Col 1 lines 10-15).

Regarding claims 4 and 5, Laciacera, as modified above, teaches a closable opening device for sealed packages of pourable food products comprising a movable ring (Laciacera; 18) further comprising a guide groove (Laciacera; 47) in the inner circumference surface of the pouring spout part and a guide boss (Laciacera; 26) in the outer circumference surface of the movable ring so that the movable ring can move vertically when rotating with the rotation of the cap and wherein the position of the guide

groove when completing the rotation is lower than that of the guide groove when starting the rotation (Laciacera; Col 7 lines 5-10).

Regarding claim 6, Laciacera, as modified above, teaches a container comprising a tamper-proof part righting against said flange part, wherein said rotation assist part engages with said tamper-proof part prior to opening so as to be disengaged easily by means of the cap rotation (Laciacera; Col 7 lines 1-5).

***Response to Arguments***

5. Applicant's arguments, see Pages 6-9, filed 6/17/2010, with respect to the rejection(s) of claim(s) 2-7 under USC 103(a)—Hess in view of Laciacera have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Laciacera in view of Hess and Wald. Laciacera essentially teaches all the structure of the claimed cutter, the seal, the spout and the cap but lacks the claimed orientation. Wald and Hess, together, teach a pouring spout comprising a cutting ring disposed on a slanted gable wall; said cutting ring is parallel to a vertical wall of the container.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER DEMEREE whose telephone number is (571)270-1982. The examiner can normally be reached on Mon-Fri, 8:00 AM-5:00PM, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Demeree/  
Examiner, Art Unit 3782

/Nathan J. Newhouse/  
Supervisory Patent Examiner, Art Unit 3782